

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

MAR 18 1993

In the Matter of)

DOCKET FILE COPY ORIGINAL

FCC MAIL ROOM

Implementation of the Cable
Television Consumer Protection
and Competition Act of 1992)

MM Docket No. 92-260

Cable Home Wiring)

COMMENTS OF LIBERTY CABLE COMPANY, INC.

In a Petition for Reconsideration and Clarification filed in 1993,^{1/} Liberty Cable Company, Inc. ("Liberty") requested that the Commission require cable operators to allow building owners to purchase loop-through wiring in the limited situation where all subscribers in a multiple dwelling unit ("MDU") served by a loop-through wire elect to switch to a new multichannel video programming distributor ("MVPD"). In response, the Commission issued the First Order On Reconsideration And Further Notice of Proposed Rulemaking in the above captioned proceeding ("NPRM") which seeks comments on several issues associated with Liberty's request.

First, the NPRM asks whether the Commission should apply the same rules regarding compensation and technical standards to loop-through wiring that it now applies to non-loop-through wiring. Liberty believes that the same compensation and technical rules

^{1/} Petition of Liberty Cable Company, Inc. for Reconsideration and Clarification, MM Docket No. 92-260, filed April 1, 1993.

No. of Copies rec'd
List ABCDE

049

should apply to both wiring configurations since there is no meaningful distinction between these configurations for purposes of these particular rules. For example, the Commission's existing rules prescribe a per-foot replacement cost for cable inside wiring based on the length of the wire on the customer side of the demarcation point multiplied by the value of the wire itself (which is usually a few cents per foot).^{2/} By applying the same compensation standards, a cable operator would be equitably compensated under the existing regulatory scheme regardless of the length of the wire classified as "inside wiring."

Second, the NPRM asks where the demarcation point should be located in a loop-through system. Liberty believes that the most practical demarcation point in loop-through configurations is the point where the loop-through wiring connects with a common feeder line. As Liberty has argued in the context of non-loop-through systems, Liberty's proposed demarcation point provides MVPDs with meaningful access to the loop-through wiring, thereby creating an incentive for MVPDs to compete for MDU subscribers. If the demarcation point is physically inaccessible (e.g., buried in internal conduits), MVPDs will be unable to compete effectively.

Third, in the NPRM, the Commission said "we are concerned with allowing the multiple dwelling unit building owner to control the [loop-through] wiring since control could arguably supersede

^{2/} 47 C.F.R. § 76.802(a).

subsequent subscribers' wishes."^{3/} Liberty shares this concern and believes that subscribers -- not building owners or any MVPD -- should control their own choice of service. However, it is physically impossible to apply this principle to loop-through wiring because the system architecture itself does not allow individual subscribers independently to choose separate services using the loop. This constraint exists regardless of who controls the loop.

All subscribers on the loop take the same service. Therefore, the person who controls the loop controls the service.^{4/} This apparent drawback actually offers a significant consumer benefit. Loop-through wiring is well suited to bulk cable service because everyone on the loop gets the service.^{5/} And bulk cable service invariably offers lower prices to consumers. It has been Liberty's experience that when the building owner controls the loop, there is vigorous competition among MVPDs to sell bulk cable service to the owner. That competition typically means the building residents pay

^{3/} NPRM ¶ 40.

^{4/} The only way individual subscribers can get an individual choice of service among multiple MVPDs in a loop-through building is by the installation of new dedicated lines.

^{5/} "Bulk cable service" means that all building residents receive cable service. The building owner pays for the service and either offers the service free as an amenity or passes the cost along to the residents. In the markets Liberty serves, loop-through wiring is used almost exclusively for bulk cable service and the building owner never takes a profit from the bulk service.

even lower rates.^{6/} However, competition for bulk cable service on loop-through wiring is thwarted if the franchised cable company owns or controls the loop.^{7/}

It also has been Liberty's experience that the franchised cable company uses its control of the loop to discourage building owners from entering into bulk contracts with Liberty. Time Warner has, on several occasions, claimed ownership and control of the loop and sued building owners who allowed Liberty to provide bulk cable service on the loop even after the building owners lawfully terminated Time Warner's bulk cable service.^{8/}

Simply put, Liberty has encountered the same problems in getting access to loop-through wiring as it has encountered in getting access to individual dedicated lines. The franchised cable company claims ownership and control over the wire and refuses to allow a competitor to use it even though the customer wants to

^{6/} The Telecommunications Act of 1996 seeks to increase that competition by lifting uniform price restrictions on bulk cable service offered by franchised cable companies provided that these cable operators do not engage in predatory pricing. See 47 U.S.C. § 543(d).

^{7/} Hotels (which do not have permanent residents) in New York and throughout the country, typically have loop-through wiring configurations which are well-suited for bulk cable service. Again, if a competing MVPD cannot utilize the loop-through wiring, it is unable to compete with the incumbent cable operator.

^{8/} See, e.g., Manhattan Cable Television, Inc. v. Fifty-First Beekman Corp., Supreme Court of the State of New York, New York County, Index No. 92-16790; Paragon Cable Manhattan v. 180 Tenants Corporation and Douglas Elliman-Gibbons & Ives, Inc., Supreme Court of the State of New York, New York County, Index No. 6952/92.

switch service providers. The customer is particularly discouraged from changing services when faced with the threat of a lawsuit.

The Commission can and should promote access to loop-through wiring by competing MVPDs. The customer -- be it the building owner or the individual -- should have the opportunity to acquire the cable on their premises when they change MVPDs. Accordingly, loop-through wiring should be deemed cable inside wiring when all customers on the loop take the new service.


The concern about building owners acting as "gatekeepers" of the loop is legitimate. But there will always be a gatekeeper for the loop because the loop itself does not allow individual subscribers to choose a different service. Under the current state of the law, the franchised cable company is typically the gatekeeper. Liberty's experience shows that Time Warner abuses its gatekeeper status to keep competitors off the loop. This, in turn, causes consumers to pay higher prices.

For the foregoing reasons, the Commission should include loop-through wiring in the cable inside wiring definition in those limited situations where all subscribers on a loop-through wire elect to terminate a cable operator's service. This will transfer control of the loop back to the customer -- the building owner -- for bulk cable service which, in turn, promotes meaningful competition and reduces the cost of service.


Respectfully submitted,
LIBERTY CABLE COMPANY, INC.

GINSBURG, FELDMAN AND BRESS, CHARTERED

By:


Henry M. Rivera
Jay S. Newman
Suite 800
1250 Connecticut Avenue, NW
Washington, DC 20036
202-637-9000

W. JAMES MACNAUGHTON


90 Woodbridge Center Drive
Suite 610
Woodbridge, NJ 07095

ATTORNEYS FOR LIBERTY CABLE COMPANY, INC.

Dated: March 18, 1996